



Protecting Your Biosolids Program – Legal Considerations

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The 1987 Clean Water Act Amendments Added Section 405 to the Act Which Governs the Management of Sewage Sludge

- Directs EPA to prepare regulations governing the disposal or utilization of sewage sludge.
- Regulations should identify and describe how to protect public health and the environment from toxic pollutants in the sludge.
- Review of toxic pollutants every two years.

Federal Regulatory Authority

- 40 CFR Part 503 – Standards for the use and disposal of sewage sludge were finalized in 1993.
 - General provisions.
 - Land application.
 - Surface disposal.
 - Pathogen and vector attraction reduction.
 - Incineration.
- NPDES permits (or other appropriate program) shall include requirements for the proper use or disposal of sludge.

EPA Office of Inspector General March 2002 Report

- EPA does not have an effective program for ensuring compliance with the land application requirements of the federal rules.
- EPA has made little progress in delegating the biosolids program to states.
- EPA cannot assure the public that current land application practices are protective of human health and the environment.

Oregon State Regulatory Authority

- OAR Chapter 340 – Division 50 rules regulate land application of domestic wastewater treatment facility biosolids, biosolids-derived products and domestic septage.
- Implementing Oregon's biosolids program, Oregon DEQ IMD – December, 2005.
- Biosolids land application in Oregon is regulated through:
 - NPDES or WPCF permit.
 - Biosolids Management Plan.
 - Site authorization letter.

Oregon NPDES Permit Biosolids Management Requirements

- Monthly sampling for various parameters.
- Record date, volume and locations where biosolids are applied.
- Monthly record of % volatile solids reduction accomplished through stabilization.
- Biosolids must be managed in accordance with the DEQ-approved biosolids management plan and DEQ site authorization letters.
- The biosolids management plan and site authorization letters are incorporated by reference into the permits.

Biosolids Management Plan

- Pathogen and vector attraction reduction.
- Biosolids monitoring.
- Biosolids storage.
- Transportation.
- Remedial procedures (spills and odor).
- Biosolids land application site management practices.
- Recordkeeping and reporting.

Site Authorization Letter

- Regulations, rules and permit requirements.
- Treatment processes.
- Transportation.
- Land application activities.
- Application rates and timing.
- Site restrictions
 - Land application shall cease when the potential exists for:
 - Nuisance conditions.
 - Runoff beyond the approved areas.

Site Authorization Letter (Continued)

- Remedial procedures
 - Cleanup of spills.
 - Odor.
- Monitoring and reporting.
- Notification
 - Notify DEQ of any major changes that could influence biosolids quality or quantity.
- Additional conditions
 - Authorization is subject to revocation if health hazards, environmental degradation or nuisance conditions develop.

Other Agreements

- Lease agreement with the property owner.
- Agreement for transportation and/or application of biosolids.

Northwest Environmental Advocates Work to Stop Sewage Sludge Dumping

The NWEA website states:

- EPA regulations are woefully inadequate to protect farm land.
- Oregon and Washington residents are currently at the mercy of this sham of a regulatory program that allows residents to be assaulted by airborne sewage dust, water pollution and, sometimes, horrible odors.

NWEA Involvement with Roseburg Urban Sanitary Authority (RUSA) Biosolids Project at Hayden Ranch

- April 2011 – Neighbors complain to DEQ of improper sludge disposal.
- October 2011 – DEQ issues a new site authorization letter for the Hayden property.
- November 2011 – NWEA files a petition to reconsider the site authorization letter.

NWEA Petition for Reconsideration

- DEQ failed to follow public notice and comment rules.
- DEQ should better evaluate the effect of biosolids application on the temporary water table.
- DEQ should require buffers to prevent wind drift, nuisance conditions and other Clean Water Act violations.
- DEQ should take additional steps to prevent groundwater contamination.

River Bend West Irrigation Association Tort Claims

- River Bend files a tort claims notice in May 2012 against RUSA, the City of Roseburg and DEQ alleging:
 - Application of biosolids on the Hayden property does not comply with applicable law.
 - Damages relating to the water used by River Bend and claims of trespass and nuisance.
- DEQ has no information indicating that application of biosolids on the Hayden property has an adverse impact on:
 - Water quality in the Umpqua River.
 - Groundwater at the Hayden property.

Nuisance, Trespass and Personal Injury Claims Relating to Land Application

- Oregon has a “right to farm” law that limits the ability of third parties to bring claims of nuisance or trespass against certain farm and forest practices.
- Many other states have “right to farm “ laws.
- In December 2012, a lower court in Pennsylvania ruled that the land application of biosolids is a protected farming activity under the state “right to farm” act.

Another Disturbing Development

- Wahkiakum County, Washington ordinance prohibits the land application of Class B biosolids.
- Lower Washington court rules in October 2012 that the county ordinance is valid and not preempted by state law.
- Kern County case in California will likely conclude that a county ballot measure prohibiting the land application of biosolids is preempted by state law.
- These issues will be decided on a state-by-state basis.

Being Smart Legally

- Are you meeting all the requirements of your key permitting documents?
 - NPDES permit provisions.
 - Approved biosolids management plan and land application plan.
 - Biosolids site authorization letter.

NPDES Permit Compliance

- Is the monthly sampling conducted according to the permit and are the specified test methods being followed?
- Are the records for volume and locations of biosolids being kept?
- Are the biosolids applied on DEQ approved sites?

Biosolids Management Plan

- Plan is incorporated by reference into the NPDES permit.
- Any changes in solid waste management activities that significantly differ from the approved plan require the prior written approval of DEQ.
- Is your current operation consistent with your approved plan?
- Are you complying with all of the procedures and practices described in your current plan?

Site Authorization Letters

- Is the landowner and the acreage of the property still correct?
- Are you complying with all of the requirements of the site authorization letter?
- Is there the potential for nuisance conditions or runoff beyond the approved areas?

Recordkeeping

- Do you have all the relevant records?
- Are the records well organized and easily retrievable?
- Are you following your records retention policy?

Lease Agreement with Property Owner

- Is the City complying with the obligations of the agreement?
- Is the land owner complying with:
 - The biosolids utilization plan?
 - Agricultural practices and government regulations governing biosolids use?

Agreement for Transportation and/or Application of Biosolids

- Are the parties meeting their respective obligations under the agreement?
- Contractor's insurance obligations.
- Spill response.
- Biosolids loading, transportation and offloading requirements.
- Compliance with specified land application requirements.

Should You Conduct Your Own Internal Review or Retain an Outside Consultant?

- Before you conduct any review you must be committed to resolving any identified deficiencies as promptly as possible.
- Do not create any incriminating documents.
- Develop a plan for remedying any identified issues in a timely manner.
- Conduct this review on a periodic basis.

Questions, Comments or Concerns?